

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

v.

Case Number 3:15-CR-196-01(FLW)

**BOBBY BOYE a/k/a
"Bobby Ajiboye" a/k/a
"Bobby Aji-Boye"**

Defendant.

**SUPPLEMENTAL CERTIFICATION OF DEFENDANT BOBBY BOYE IN
SUPPORT OF DEFENDANT'S PETITION UNDER 28 U.S.C. § 2255**

BOBBY BOYE, of full age, hereby certifies as follows:

1) I am the defendant in this action. I make this Supplemental Certification in further support of my accompanying petition for relief under 28 U.S.C. § 2255.

2) As part of my initial meeting with Mr. Thomas in his office sometimes in November 2014, Mr. Thomas asked me during the narration of the facts how I "ended up in a remote part of the world called Timor-Leste." In response to that question, I informed him that:

(a) That sometimes around August 2009, I saw an advertisement placed with The Economist magazine by an agency of the Norwegian Government known as the Norwegian Petroleum Assistance Program (NPAP) soliciting applications for

the position of Petroleum Tax Advisor. The primary function of the right candidate was to audit companies involved with the extraction of oil and gas in Timor-Leste and to provide sundry tax advisory services to the Petroleum Tax Directorate.

(b) That in response to the advertisement referenced above, I submitted an application for consideration as a Petroleum Tax Advisor to the person designated as the contact person.

(c) That on or about November 2009, I was contacted by the NPAP to meet with one of their representatives who was attending a meeting at the United States building in New York for an initial interview. After our substantive conversation about tax and accounting issues implicated in petroleum and gas extraction, the representative told me that approximately 107 candidates applied for the position and that the short listing process had just commenced.

(d) That following the meeting in New York referenced above, I was invited to a round of interview at the end of January 2010 in Oslo, Norway. I interviewed with several employees of the NPAP and certain officials of the Norwegian Ministry of Finance for two (2) successive days.

(e) That on or about the end of February 2010 I was again invited back to Oslo for another round of interview and at which I was made a conditional offer of

employment that was subject to the approval of the Timor-Leste Tax Commissioner, Mr. Cancio Oliveira.

(f) That on or about the middle of March 2010, at the direction of the NPAP, I travelled to Timor-Leste for another round of interview with the officials of the Ministry of Finance, including but not limited to the Vice Minister of Finance (Mr. Rui), the Tax Commissioner, Mrs. Monica Rangel- Head of the Petroleum Tax Directorate, Messrs David and Abdurrahman Khan (employed at the Petroleum Tax Office as Tax Advisors and auditors through a World Bank Assistance Program), Mr. McGuire (Legal Advisor to the Timor-Leste Revenue & Customs Directorate).

(g) That on or about the beginning of April 2010, NPAP informed me that I have my appointment as a Petroleum Tax Advisor has been approved by the Timor-Leste Tax Commissioner and an offer of employment was made to me for a period of Nine (9) months, renewable at the option of NPAP.

(h) That after the expiration of the initial contract, on or about the first week of April 2011, NPAP and the Norwegian Ministry of Finance, offered a new contract of employment for approximately 6 or 7 months until sometimes in September 2011 and at which time I was told by Mr. Bjarne (the coordinator of the NPAP in Timor-Leste) that the NPAP and the Ministry of Finance would

disengage from the funding of Petroleum Assistance Program at the Timor-Leste Petroleum Tax Office. As a reflection of my satisfactory performance, my salary was increased by approximately 25% for the second phase of my service contract.

(i) That following the discontinuance of the NPAP assistance to Timor-Leste Petroleum Tax Office on or about September 2011, the Timor-Leste Ministry of Finance approached me and offered me a new position as the Legal Advisor to the Petroleum Revenue Tax office until December 31, 2012. As a reflection of the satisfactory performance of my job under the NPAP-sponsored program, the Timor-Leste Ministry of Finance increased my salary by approximately 25%. At the expiration of the initial contract with the Timor-Leste Ministry of Finance in December 2012, I was offered another contract commencing January 1st 2013 and ending December 2013 with another salary increase of approximately 35%.

(j) That the Timor-Leste Ministry of Finance was my direct employer from September 2011 until I left Timor-Leste and returned to the US in April 2013.

3) That knowing the facts surrounding my employment while I was in Timor-Leste from 2010 to 2013 as narrated above, Mr. Thomas failed to adequately represent my interest and provided constitutionally defective assistance as my professional counsel when he failed to challenge the following statement made by the Court during my sentencing hearing on October 15, 2015, to wit: "It's

more egregious in my mind because it was not just a corporation who may have some kind of insurance or whatever that could make them whole, and not just done to our country, but you were really sent there in some ways as a personal ambassador to this Country handpicked by Norway to assist an underdeveloped poor country."

4) Knowing that the Court took the observation in paragraph 2 above into consideration in fashioning out a long sentence for me, Mr. Thomas rendered a defective performance in violation of my right under the Sixth Amendment to the US constitution by his failure and or neglect to:

(a) challenge the Court's comment to the effect that I was NOT hired for the position in Timor-Leste by the mere fact that I was US citizen or the citizen of any particular country but was hired because of my eminent qualifications in the area of tax and accounting and my demonstrable experience acquired over 27 years.

(b) object to the characterization of my employment as "Personal ambassador" of any country, be it Norway or the US or any other country for that matter, since my employment whether through the NPAP and or directly by the Timor-Leste Ministry of Finance was NOT in any shape or form a diplomatic engagement. That throughout my employment at Timor-Leste from 2010 to 2013, I

did not possess any diplomatic passport nor was I treated as a "personal ambassador" of ANY country to Timor-Leste.

(c) object to the impression that I was "handpicked" by Norway knowing fully well that I went through a rigorous interview that lasted for over 7 months along with other candidates.

(d) to inform the Court that at the time the bid for the Tax Regulations under the Taxes and Duties Act and the Taxation of the Bayu Undan Contractors Act forming part of the subject of the criminal complaint was submitted in March 2012, I was neither an employee of the NPAP nor that of the Norwegian Ministry of Finance but a direct employee of the Timor-Leste Ministry of Finance.

(e) to strenuously object to the incorrect notion of making Timor-Leste "whole." Mr. Thomas knew fully well from the series of documentary evidence that I provided to him and recited in my prior Certification of September 15th, 2016 and which are incorporated by reference herein, that Timor-Leste not only received the precise bargained-for benefits under the three (3) contracts forming the subject of this case but failed to pay for the full value of the said benefits to date (Timor-Leste has paid only \$3.5 million and approximately \$1.4 million is still outstanding), and yet he failed spectacularly to challenge the incorrect notion

that "it was not just a corporation who may have some kind of insurance or whatever that would make them whole."

5) Furthermore, Mr. Thomas exercised gross constitutionally defective assistance of counsel and exposed me to greater sentence than I should have received if I was represented by an efficient counsel practicing criminal defense law in the Third Circuit when he failed to challenge the government false representation in its Sentencing Brief where it states: "In sum, the seriousness of defendant Boye's criminal conduct is unquestionable. His provision of some work product under the Contract, while falsely impersonating licensed attorneys and accountants with decades' long experience in the oil and gas sector, should not be relied upon in mitigation."

6) First, Mr. Thomas' performance as my counsel was constitutionally deficient because he failed to challenge the government's false and illogical statement referenced in paragraph 4 above by failing to point out to the Court that the issue of "impersonating licenses attorneys and accountants" do not make any sense in fact and in law, the reason being that to the knowledge of the Government as well as Mr. Thomas, NOT ONE of the persons listed as employees of Opus & Best in the document was in fact a licensed attorney or accountant or a living/dead person as falsely represented in the government's sentencing brief. Mr. Thomas failed to point out the illogicality of "impersonating" a non-existing person or

persons that was so central to the theory of the government's case, especially its relationship to the issue of "loss" and the appropriate "credit" under the relevant provisions of the US sentencing Guidelines.

7) Secondly, Mr. Thomas rendered a constitutionally defective assistance as my counsel when he failed to point out to the Court throughout this case (from plea deal to forfeiture to sentencing) that the bid soliciting documents issued by Timor-Leste DID NOT require that the bidders for ANY of the contracts be "licensed attorneys and or accountants." The bid documents issued by Timor-Leste did not specify that that only "licensed professionals" should apply. As a matter of fact and by way of example, Messrs Bayphase, a UK company and Charles River and Associates (a US company) who were both awarded TAX AUDIT work pursuant to the same bid soliciting documents that Opus & Best acted upon were neither a law firm nor a firm of accountants. Furthermore, approximately 70% of the firms or persons that responded to the bid soliciting documents were neither a law firm/licensed attorneys nor accountants.

8) Furthermore, Mr. Thomas rendered an unconstitutional ineffective assistance of counsel by his failure to point out to this Court despite his knowledge and that of the government, that the entire work forming the subject of this criminal information was performed indeed by licensed professionals (Messrs.

Chen and Kapadia and myself), if indeed there was a requirement that the work be performed by attorneys and or accountants.

9) Mr. Thomas rendered a constitutionally defective assistance of counsel and caused me a substantial injury by way of the long sentence that was imposed when he failed as detailed in my original Certification and explained above to argue the INAPPLICABILITY of Note 3(F)(v) of the U.S.S.G Section 2B1.1 to the peculiar facts of my case, and certainly failed to argue the correct case law on Note3(F)(v) of the U.S.S.G Section 2B1.1. in the Third Circuit.

10) Mr. Thomas rendered a constitutional defective assistance of counsel and performed substantially below the level of competence exercised by successful defense attorneys in the Third Circuit (on correct application of Note (F)(v) of the U.S.S.G Section 2B1.1 and calculation of loss for sentencing purposes-including credit for value received by victim from the defendant) from the negotiation of the Plea Bargain, Forfeiture Order, Pre-Sentence Report, Sentencing Briefs and all the way to sentencing when he:

(a) failed to argue the relevant case law in the Third Circuit or any Circuit for that matter relating to the burden of the government to prove actual loss,

(b) failed to argue the relevant case law in the Third Circuit or any Circuit whatsoever in respect of the relevant and applicable U.S.S.G and the Notes regarding the correct calculation of loss for sentencing enhancement purposes,

(c) failed to argue the relevant case law in the Third Circuit or any Circuit whatsoever regarding the value of satisfactory services received by a victim from persons who may have fraudulently obtained procurement contracts,

(d) failed to argue the Third Circuit case law that to the extent that the services rendered by Opus & Best did not harm Timor-Leste but in fact BENEFIT Timor-Leste, my base offense level ought not to be enhanced by the sum of money paid in exchange for the satisfactory services,

(e) failed to request an evidentiary hearing to determine the specific and crucial issue of "loss" and or request for proof from the government of any economic loss sustained by Timor-Leste in relation to the three (3) contracts at issue,

(f) failed to correctly distinguish between the issue of "culpability" and "quantification of loss,"

(g) failed to argue that even if the false hypothesis of the government relating to the "impersonation" of non-existing- living or dead, of licensed attorneys and accountants" was believable, to the extent that Timor-Leste received

something of value and was satisfied with my services, such a narration would be meaningless for sentencing enhancement and computation of loss purposes and that the fees paid by Timor-Leste in the circumstances cannot be considered as a "loss" under the Third Circuit case law, and

(h) failed to argue that the writing of Tax Regulations, preparation of Interpretative Guidelines and or preparing a Transfer Pricing Report (the services rendered to Timor-Leste in this case) are not LICENSED TRADES and the persons involved in the performance of such services, whether in Timor-Leste and or the US are NOT required by any law or regulation to be LICENSED PROFESSIONALS. More particularly in the State of New Jersey where the crime at issue was purportedly committed, there is no known rule of law and or regulations cited by the government either characterizing the writing of tax regulations, drafting Interpretative Guidelines and or preparing a Transfer Pricing Report as licensed profession and or mandating persons involved with the delivery of such services to possess a professional license," either within the State of New Jersey or in Timor-Leste,

(i) failed to object to the erroneous interpretation and application of U.S.S.G. Note 3(F)(v)(1) canvassed by the government in its sentencing brief and at sentencing (and also included in the Pre-Sentence Report of the Probation Officer) which ought to be applicable only in LIMITED circumstances where in fact

"services were fraudulently rendered to the victim by persons falsely posing as licensed professionals," as opposed to the present case where a professionally-licensed person fraudulently obtained procurement contracts but the actual performance was done unquestionably by licensed professionals,

(j) failed to bring to the attention of this Court the Sentencing Commission's intent and the narrow purpose of U.S.S.G. Note3(F)(v)(1), memorialized in U.S. Sentencing Guidelines Manual app. C, Vol. II, amend.617 at 183-84 (2003) as follows: "The definition of "loss" also provides special rules for certain schemes. One rule includes loss (and excludes from crediting) the benefits received by victims of persons fraudulently providing professional services. This rule reverses case law that has allowed crediting (or exclusion from loss) in cases in which services were provided by persons posing as attorneys and medical personnel. *See U.S. v. Maurello, 78 F.3d 1304 (3rd Cir.1996)*. The Commission determined that the seriousness of these offenses and the culpability of these offenders is best reflected by a loss determination that does not credit the value of the UNLICENSED BENEFITS PROVIDED," (emphasis supplied).

(k) failed, in spite of several documentary proofs provided to him (email correspondences, billings, bank statements, reports, work products etc. referenced in my original Certification of September 15th, 2016), to challenge and or object to the applicability of U.S.S.G. Note 3(F)(v)(1) to this case, and

(l) failed to argue affirmatively that the value provided to Timor-Leste in the contracts forming the subject of this case arose indeed as a result of LICENSED BENEFITS provided by licensed professionals (Messrs. Chen & Kapadia and Boye) and that failure resulted in a prejudice to me by way of substantially higher sentence than I should have received.

11) Mr. Thomas, my defense attorney, performed a constitutionally defective assistance as my counsel when he failed to object to the use of the sum of \$3.5 million as the restitution amount when there was no factual finding between the imaginary loss of \$3.5 million and my offense conduct.

12) Mr. Thomas performed a constitutionally defective assistance of counsel when he failed to make a distinction between the applicable United States Sentencing Guidelines (U.S.S.G.) relating to the issue of loss and more particularly whether the value of services rendered may be taken as a credit against any "loss" and the governing law (Mandatory Victims Restitution Act) relating to the determination of restitution. Furthermore, Mr. Thomas, as a direct result of his ineffective assistance and his lack of relevant knowledge of case law precedent governing restitution in this Circuit and others, allowed this Court without any objection, to impose on me an amount of restitution (\$3.5 million) that is substantially higher than what I may owe (assuming the government's theory of the case on restitution and "loss" amount under the U.S.S.G. was valid as it were), by

his omission to point to this Court that the government already forfeited several of my properties including approximately \$370, 000 in cash, valuable cars, three (3) real estate properties, an expensive wrist watch and the common stock of Herbal Water Incorporated before the sentencing hearing on October 15, 2015 even when you discount the the value of services that I performed in fulfillment of the service contracts. The value of those assets was not taken into consideration as credit against the restitution neither by this Court nor the Probation Officer in her pre-sentencing report. Those errors affected my substantial rights and subjected me to conditions that the U.S.S.G. and the Mandatory Victims Restitution Act do not contemplate.

13) Furthermore, Mr. Thomas' performance at the sentencing hearing on October 15, 2015 and at all times prior to date (including the negotiation of a Plea, forfeiture agreement and his review of the Pre-Sentence Report) was constitutionally defective as a result of his failure and or neglect to demand an evidentiary hearing to determine:

(a) If in fact there was any loss, and if there was any, the quantum of such loss, for the limited purposes of sentencing enhancement under the U.S.S.G.,

(b) whether Section 2B1.1 app.n.3(F)(v)(1) was applicable in the peculiar circumstances of this case,

(c) the value of services rendered to Timor-Leste under the three (3) separate service contracts,

(d) whether or not Timor-Leste, having received MORE value than it paid for (Timor-Leste received services that it priced in the contracts for \$4.9 million BUT made only a part payment in the sum of \$3.5 million) was entitled to ANY restitution in the peculiar circumstances of this case, and

(e) the ACTUAL LOSS, if any, incurred by Timor-Leste for the limited purposes of restitution under the Mandatory Victims Restitution Act and within the peculiar circumstances of this case.

14) Mr. Thomas is obligated as an effective counsel to know the U.S. Sentencing Guidelines and the relevant Circuit precedent but his performance as my defense counsel throughout this case clearly shows that he plainly did not. That failure was not a strategic choice and fell outside the norms of effective assistance.

15) In spite of my unequivocal expression against the enhancement of my sentence under U.S.S.G. Section 3B1.3 (Abuse of Trust) during my conversations with Mr. Thomas, he refused and or neglected to raise the objection before this Court or expressed such objection to the government and or the Probation Officer, knowing fully well that the peculiar circumstances of my employment as a Tax Advisor to the Timor-Leste government did not meet the 3-prong test of what

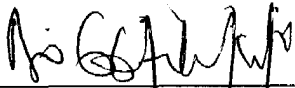
constitutes an abuse of trust in this Circuit. Aside from our conversation relating to the scope of my employment, I provided Mr. Thomas with the Organizational Chart at the Timor-Leste Ministry of Finance during the course of my engagement as well as the copies of all the relevant Timor-Leste laws governing procurement contracts (copies of which were exhibited with my Certification of September 15th, 2015). Mr. Thomas knew that I had no authority whatsoever to award the contracts to Opus & Best LLC. Furthermore, Mr. Thomas also knew that my position as a Tax Advisor did not in any way make the detection of the crime cumbersome in any manner whatsoever. The failure and or neglect of Mr. Thomas to raise a valid objection against the application of U.S.S.G Section 3B1.3. to my case affected my substantial right and caused me injury by way of a longer term of imprisonment than I would have received if I was represented by an effective counsel who knew the correct application of the U.S.S.G. Considering the adverse effect on the length of my sentence, the failure and or neglect of Mr. Thomas to object to the application of U.S.S.G. Section 3B1.3. was not a strategic professional choice and fell out of the realm of competent and effective legal representation under the 6th Amendment.

16) In the circumstances discussed herein and those that are contained in my original Certification dated September 15th, 2016, I firmly believe that throughout this case Mr. Thomas' performance was sub-standard, grossly

inefficient and is tantamount to a breach of my Constitutional right to have a counsel under the Sixth Amendment to the US constitution. I believe that I would have received a much lesser sentence and owe \$0 restitution if Mr. Thomas had represented me effectively through each phase of this case and presented my case competently to this Court.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATE: FEB. 23rd, 2017



BOBBY BOYE